IN THE SUPREME COURT OF THE STATE OF DELAWARE

COURTNEY D. JONES,	§	
	§	No. 748, 2010
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
STATE OF DELAWARE,	§	Cr. ID No. 1004023127
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: April 12, 2011
Decided: May 16, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

O R D E R

This 16th day of May 2011, upon consideration of the appellant's opening brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Courtney D. Jones, was found guilty in a Superior Court bench trial of Robbery in the First Degree. He was sentenced immediately following the verdict to 10 years of Level V incarceration, to be suspended after 4 years for 18 months at Level III probation. This is Jones's direct appeal.

(2) Jones' counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and (b) the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.[1]

(3) Jones' counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Jones' counsel informed Jones of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Jones also was informed of his right to supplement his attorney's presentation. Jones responded with a brief that raises three issues for this Court's consideration. The State has responded to the position taken by Jones' counsel as well as the issues raised by Jones and has moved to affirm the Superior Court's judgment.

[1] *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

(4) Jones raises three issues for this Court's consideration. He claims that a) there was a lack of evidence linking him to the robbery before he was taken into custody and interviewed; b) he should have been convicted of Robbery in the Second Degree rather than Robbery in the First Degree because he used a fake gun rather than a real one to commit the robbery; and c) the Superior Court's sentence was excessive.

(5) The record reflects that, on March 20, 2010 at approximately 4:00 p.m., Jones telephoned Papa John's Pizza from a blocked cell phone number and ordered a pizza to be delivered to the Harbor Club Apartments in Newark, Delaware. When the delivery person, Kathleen Riley, came to deliver the pizza, Jones approached her, told her he had ordered the pizza, took her to the laundry room of the apartment building and asked her to wait.

(6) Riley heard a rustling noise inside the laundry room and assumed Jones was getting the money to pay for the pizza. Instead, Jones emerged from the laundry room brandishing what he said was a revolver, pointed it at Riley's chest and demanded money. Fearing for her safety, Riley gave Jones all the money she had at the time---$20.00. Jones then ordered Riley into a utility closet and told her to stay there. Riley did as she was told. After a few minutes, Riley sent a text message to her fiancé for help from the utility closet and told him to call the police.

(7) Officer Ronald DiMaano of the New Castle County Police Department responded to the Harbor Club Apartments. He dusted for fingerprints on a washing machine near a plastic bag in the laundry room and found fingerprints that ultimately were linked to Jones through the Automated Fingerprint Identification System ("AFIS"). During the course of the investigation, Riley was shown three photographic arrays, but was unable to identify the robber. The police arrested Jones on April 29, 2010 on the basis of the AFIS "hit." An interview was conducted, during which Jones confessed to the robbery. Jones stated that he had used a toy gun during the robbery.

(8) Jones' first claim is that there was a lack of evidence---i.e. a lack of probable cause---linking him to the robbery before he was taken into custody and interviewed. Under Delaware law, whether there is sufficient probable cause for a warrantless arrest for a robbery depends upon the "totality of the circumstances."[2] In this case, Jones' fingerprints were found immediately after the robbery on a washing machine next to a plastic bag, which the victim most likely had heard being moved about before the robber emerged from the laundry room. Moreover, Jones did not live at the Harbor Club Apartments and he fit Riley's general description of the robber. Based

[2] *Coleman v. State*, 562 A.2d 1171, 1177 (Del. 1989).

on the totality of the circumstances, the police had sufficient probable cause to take Jones into custody in connection with the robbery. As such, we conclude that Jones' first claim is without merit.

(9) Jones' second claim is that the evidence did not support his conviction of Robbery in the First Degree because he used a toy gun to commit the robbery. In order to prove that the defendant committed first degree robbery,[3] "the State need not prove that a defendant actually possessed a gun or other deadly weapon during the commission of the crime."[4] Rather, the State need prove only that a) the victim believed that the defendant possessed a weapon, and b) the defendant made some objective physical manifestation that he was armed.[5] Riley's testimony at trial amply supported the judge's finding that the State had proven the elements of Robbery in the First Degree beyond a reasonable doubt. As such, we conclude that Jones' second claim also is without merit.

(10) Jones' third, and final, claim is that his sentence was excessive, given his lack of a prior felony record, acceptance of responsibility and remorse for his actions.[6] When sentencing Jones to more than the minimum/mandatory sentence of 3 years, the Superior Court judge noted

[3] Del. Code Ann. tit. 11, §832(a)(2).
[4] *State v. Smallwood*, 346 A.2d 164, 166-67 (Del.1975).
[5] *Mack v. State*, Del. Supr., Nos. 34, 51, 2006, Berger, J. (Aug. 28, 2006).
[6] Jones also filed a motion for modification of sentence following his trial and sentencing, which the Superior Court denied on January 3, 2011.

that, during his trial testimony, Jones attempted to minimize the effect of his actions. Given that circumstance, it was within the Superior Court's discretion to sentence Jones as it did.[7] Jones' sentence was within the statutory limits[8] and there is no evidence that the judge relied on impermissible factors or exhibited a closed mind.[9] In fact, the Superior Court exhibited leniency in its sentencing order by giving Jones the opportunity to seek modification of his sentence after 3 years upon a demonstration of substantial efforts at rehabilitation. We, therefore, conclude that Jones' third, and final, claim is likewise without merit.

(11) This Court has reviewed the record carefully and has concluded that Jones' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Jones' counsel has made a conscientious effort to examine the record and the law and has properly determined that Jones could not raise a meritorious claim in this appeal.

[7] *Fink v. State*, 817 A.2d 781, 790 (Del. 2003).
[8] Id.; Del. Code Ann. tit. 11, §§4205(b)(2) and 832(b)(1).
[9] *Fink v. State*, 817 A.2d at 790.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice